THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No :12485 of 2007

DATED: 12-12-2007

BETWEEN:

Katepalli Srinivasa Rao.

.....
PETITIONER

AND

The District Collector,
Machilipatnam,
Krishna District & 2 others.

.....RESPONDENTS

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ORDER:

Heard Sri C.Rama Chandra Raju, learned counsel representing the petitioner, and the learned Government Pleader for Revenue appearing for the respondents.

2. W.V.M.P.No.2432 of 2007 is filed to vacate the interim order, dated 15-06-2007, in W.P.M.P.No.15559 of 2007 in W.P.No.12485 of 2007.

3. This Writ Petition is filed for a writ of mandamus declaring the action of the respondents in insisting the petitioner to vacate from the land of Ac.0.53 cents in Sy.No.53/1 and further Ac.0.53 cents in Sy.No.53/3 of Chekkapalli village pursuant to notice, dated 18-05-2007, issued by the 3rd respondent, as illegal, and arbitrary.

4. Sri C.Ramachandra Raju, learned counsel for the petitioner, had taken this Court through the contents of the affidavit filed in support of the Writ Petition and also the counter affidavit, and would maintain that specifically in the objections the brother of the petitioner had stated that the land in question does not belong to him and when that being so, petitioner should have been put on notice.

5. Learned A.G.P. for Assignment, however, had taken this Court through the counter affidavit and would maintain that it is not a fit case to be interfered with while exercising writ jurisdiction under Article 226 of the Constitution of India.

6. This Court issued Rule Nisi on 15-06-2007 and further in W.P.M.P.No.15559 of 2007 it was ordered 'pending further orders *status quo* obtaining as on today as the nature and possession of the land, which is the subject matter of the impugned notice, shall be maintained'.

7. It is stated by the petitioner that he is the absolute owner, possessor, and enjoyer of the landed properties of Ac.0.53 cents in Sy.No53/1 and further Ac.0.53 cents in Sy.No.53/3 of Chekkapalli village, and also Ac.3.18 cents in Sy.No.53/2 southern adjoining the said land, having purchased the same under registered sale deed, dated
01-06-2007. In fact, he purchased the said property under an agreement of sale from his vendor on 11-04-2005. His younger brother-Katepally Ramesh had Ac.5.00 cents in Sy.No.53/2, having purchased the same from his vendor on 11-04-2005. Further, it is stated that on 16-05-2007 2nd respondent visited his lands and asked him to vacate from Ac.1.06 cents alleging that he was in possession of assigned lands. He submitted to the 2nd respondent that his lands are not assigned lands and there was no such land in his holding. Then the 2nd respondent orally undertook that he would enquire into the matter in the light of the concerned land revenue records and follow due process of law. Further it is stated that the 3rd respondent issued a notice, dated
18-05-2007, asking his younger brother-Katepally Ramesh to show cause why he should not be evicted from the lands of Ac.0.53 cents in Sy.No.53/1 and similar extent in Sy.No.53/3 of Chekkapally village alleging that he had acquired the said land from the assignee-Ponnaganti Subba Rao contrary to Section 3(2) of the A.P.Assigned Lands (Prohibition of Transfers) Act, 1997 (hereinafter referred to as 'Act' for the purpose of convenience). His brother submitted explanation, dated 02-06-2007, wherein he

specifically pointed out that the notices should be given to him, but since he was in possession of land, 3rd respondent received the same, but had not issued any notice to the petitioner.

8. It is also stated on 11-06-2007 that the 3rd respondent sent Village Revenue Officer of Chekkapally village with demand to vacate the said lands immediately. He immediately approached the 3rd respondent and requested to drop the action. The 3rd respondent stated that it makes no difference whether notice given to him or to his younger brother. His brother is not his family member. He separated about
10 years ago. He acquired separate properties and the 3rd respondent ought to have seen that the 2nd respondent also admitted in the inspection about his possession. The 3rd respondent is under legal obligation to issue notice to him, invite objections, and conduct enquiry thereon, before passing any order of ejectment. The 3rd respondent has no authority of law to evict him consequent upon a notice issued to his brother.

9. It is also stated that the respondents are incorrect in alleging that the petitioner is in possession of the assigned land. The lands allegedly situated in Sy.No.53/1 and 53/3 are part of his lands on ground within the specific boundaries. The said lands have never been assigned lands. Petitioner raised maize crop in the current season and the crop is existing. In any view of the matter, the respondents have no power, authority, or jurisdiction to dispossess the petitioner from the said lands without notice and enquiry under Rule 3 of the rules framed under the Act. The action of the respondents in insisting the petitioner to vacate from the said land is illegal, irregular, arbitrary, without jurisdiction, and violative of the provisions of the Act

the rules framed thereunder, and offends Articles 14, 21 and 300-A of the Constitution of India. In such circumstances petitioner approached this Court praying for appropriate reliefs which had been specified supra.

10. In the counter affidavit filed by the respondents sworn to by the 3rd respondent-Tahsildar, Musunuru mandal, Krishna District, it is averred that the Government had issued instructions to take up the verification of assigned lands
(both AWD and I.C. surplus lands) and identify the cases falling under the Act for taking further action. During the process of verification of assigned lands in Chekkapalli village of Musunuru mandal, it is found that an extent of
Ac.0.53 cents in R.S.No.53/1 and Ac.0.53 cents in R.S.No.53/3, which were originally assigned to Sri Konakanti Subbarao, s/o Reddaoaj & Katari Badramma, w/o Venkateswar Rao on 10-12-1986 respectively, are found to have been in occupation of Sri Katepalli Ramesh, s/o Seetharamaiah in contravention of the provisions of sub-Section (2) of Section (3) of the Act. Hence, a notice as required under Rule 3 of the rules made thereunder was issued to Katepalli Ramesh of Chekkapally village directing him to show cause within 15 days of receipt of the said notice as to why he should not be summarily evicted from the said land and as to why any crop or other construction erected or anything deposited therein should not be forfeited. A notice, dated 18-05-2007, was served on him on 22-05-2007, as prescribed under the rules. Aggrieved thereby she filed a Writ Petition before this Court with a request to set aside the said notice and to direct the respondent not to dispossess her from the said land.

11. In reply to paragraphs 3 to 5, it is stated that an extent of Ac.0.53 cents in R.S.No.53/1 and Ac.0.53 cents in R.S.No.53/3 of

Chekkapalli village of Musunuru mandal, which were originally assigned to Sri Konakanti Subbarao, s/o Reddaoaj & Katari Badramma, w/o Venkateswar Rao on 10-12-1986 respectively, are found to have been in occupation of Sri Katepalli Ramesh, w/o Seetharamaiah in contravention of the provisions of sub-Section 2 of

Section 3 of the Act. Hence, a notice as required under

Rule 3 of the rules was issued to Katepalli Ramesh of Chekkapally village directing him to show cause within

15 days of receipt of the said notice as to why he should not be summarily evicted from the said land and as to why any crop or other construction erected or anything deposited therein should not be forfeited. A notice, dated 18-05-2007, was served on him on 22-05-2007 as prescribed under the rules. Sri Katepalli Ramesh has filed his objection petition on 02-06-2007 stating that he has possessed an extent of Ac.5.00 in R.S.No.53/2 of Chekkapally village, situated Eastern side adjoining the said land and the said lands are private properties with absolute rights from the predecessors-in-title and requested to drop further action under the provisions of the Act. It is further stated that the petitioner has admitted that he has purchased the said property from the original assignee through unregistered sale agreement on 11-04-2005. It is therefore a clear case of acquiring assigned land by purchase from the original assignee and therefore according to sub-Section 1 of Section 3 of the Act, it shall never be deemed to have been transferred and accordingly, no right or title in such assigned land shall vest in the person acquiring the land and according to sub-Sections 2 & 3 of Section 3 of the Act, it shall be deemed to be null and void.

12. In reply to paragraphs 6 & 7 it is stated that it is correct to say that the 3rd respondent-Tahsildar, Musunuru issued a notice to

the petitioner's brother-Katepalli Ramesh as the local enquiry reveals that she is in possession and enjoyment of the assigned lands being their family joint property in response to the notice issued under the Act. Katepalli Ramesh, brother of the petitioner, has not stated in his written explanation on 02-06-2007 stating that the land in question belongs either to him or to his brother. It is therefore a clear case of acquiring assigned land by purchase from the original assignee, and therefore according to sub-Section 1 of Section 3 of the Act, it shall never be deemed to have been transferred and accordingly no right or title in such assigned land shall vest in the person acquiring the land and according to sub-Sections 2 and 3 of Section 3 of the Act, it shall be deemed to be null and void. It is further stated that the Additional Revenue Inspector, Musunuru has taken possession of the land of Ac.1.06 in R.S.No.53/1 and 3 of Chekkapally village on 15-06-2007 in the presence of mediators by conducting panchanama in the village.

13. The main grievance of the petitioner is that though the petitioner is the owner of the property in question and though his brother raised a specific objection in this regard, no notice, as such, had been issued. The explanation submitted by Katepally Ramesh to the show cause notice, dated
18-05-2007, was served on 22-05-2007 asking him to submit written explanation within 15 days from the date of receipt of the notice why he should not be totally evicted from the land and take possession of the crop, other products, the building structures or anything else therefrom. In the said objections it had been specifically stated that he had nothing to do with the said lands and his elder brother is the absolute owner and possessor of the said lands and the land of Ac.0.53 cents in Sy.No.53/1 of Chekkapally village. Thus, the notice addressed to him is not valid under law. Any notice of such kind should have been addressed to

the said K.Srinivasa Rao since he is the person interested and in possession of the said lands. Several other further facts also had been narrated. The other details need not detain this Court further since specific stand had been taken in this regard that the said person to whom the show cause notice had been addressed, i.e., Katepally Ramesh, had taken the specific stand that the Writ Petitioner alone is concerned with the said land.

14. In the light of the facts and circumstances, let the 3rd respondent issue notice to the petitioner in accordance with law and further proceed in the light of the provisions of the Act referred to supra, if in case, the 3rd respondent is of the opinion that it is a fit case to be proceeded with in the light of the facts and circumstances of the case.

15. Writ Petition is disposed of with above directions. No order as to costs.

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P.S.NARAYANA,J

12th December, 2007.
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